The Solicitors' Journal

Vol. 95 March 3, 1951 No. 9

CURRENT TOPICS

Remuneration in Non-Contentious Matters

THE March issue of the *Law Society's Gazette* contains an account of the further proceedings of the special general meeting of members of The Law Society held on 26th January last, of which only an incomplete report was published in our columns owing to the exclusion of Press representatives from the latter part of the meeting. As we ventured to surmise at the time, the remainder of the President's address was devoted to a survey of the progress of negotiations for an increase in remuneration in non-contentious matters since the last annual general meeting in July, 1950. After recalling the action of that meeting in referring back the section of the annual report dealing with remuneration for further consideration by the Council, Sir LEONARD HOLMES said that before a further approach to the Lord Chancellor was undertaken it had been considered essential to hold further discussions with the Master of the Rolls, with whom agreement had since been reached on the proposed new Sched. II. This was one of two outstanding matters on which the Lord Chancellor had wished agreement to be secured, the other being an increase in the scale for registered land conveyancing on transactions up to £10,000, for which the concurrence also of the Chief Land Registrar was required. On this latter question the President was unable to report agreement, but stated that every effort was being made and he described himself as "hopeful." Even when these difficulties had been surmounted, however, there remained the principal one, namely, the Government's economic policy, for even if an order were made by the statutory committee under s. 56 of the Solicitors Act, 1932, it was open to either House of Parliament to present an address seeking disallowance of the order. In this respect it is apparent that the Council are relying strongly on the recent increases in the salaries of higher civil servants as a refutation of the argument that the White Paper on Personal Incomes now applies to the case, if it ever did. Further news of the Council's efforts will be anxiously awaited.

Legal Aid

IN our last issue (*ante*, p. 126) we reported a Parliamentary answer by the Attorney-General to a question dealing with costs in legal aid cases; this week we print on another page a letter from a subscriber giving his views on the early working of the Legal Aid Scheme. We do not necessarily agree with these views but we would welcome comment upon them. Our own observations do not suggest that certifying committees are unwilling to grant certificates unless the case is an "open and shut" one—on the contrary the tendency would seem to be to allow assisted litigants to pursue claims in which the element of hazard is higher than an unassisted litigant would accept. We have been unable to obtain reliable information on the sufficiency or otherwise of costs and counsels' fees allowed on taxation in legal aid cases, but it will do great harm to the working of the scheme if it becomes generally believed that solicitors' costs are subject to some unofficial scaling down in addition to the statutory deduction of 15 per cent.

CONTENTS

Police as Advocates in Coroners' Courts

CORONERS are determined not to encourage the police to assume the character of advocates in their courts. In an interview with a representative of the *Northampton Chronicle and Echo* after an incident in the borough coroner's court when the deputy chief constable was not permitted by the coroner to ask witnesses questions directly, Mr. BENTLEY PURCHASE, the secretary of the Coroners' Society, said: "This action is in accordance with the recommendations of the Coroners' Society to the effect that the police should not take an active part in inquests. The society is against the spread of the practice, occurring in magistrates' courts up and down the country, where the police are conducting cases." The society, he added, had nothing against the police being legally represented at inquests where they might be involved in the proceedings. In a statement to the newspaper the chief constable, Mr. JOHN WILLIAMSON, said that he had asked the coroner whether or not the police in Northampton would be permitted to attend inquests for the purpose of asking questions of witnesses, and if they were not whether they could be represented by a solicitor. He quoted a statement from Jervis on Coroners that it was usual (though this was subject to the absolute discretion of the coroner) for the witnesses to be asked questions by parties who might be directly represented or by their legal or other representatives. Now that the position has been explained on behalf of the Coroners' Society, we do not doubt that police officers will not seek to stray beyond their functions, and will instruct solicitors on all proper occasions.

The Worshipful Company of Solicitors

AMONG matters of general interest to solicitors in the February issue of the *Newsletter* of the Worshipful Company of Solicitors of the City of London a note on the Solicitors' Clerks' Pension Fund commends the fund and its objects, and states that at the end of 1949 the fund had 2,299 members employed by some 786 firms throughout the country. The market value of invested funds now exceeds £500,000, and at the recent quinquennial valuation the actuary disclosed a satisfactory surplus. The note adds: "While some firms of solicitors have schemes with insurance companies, the majority appear still to rely upon the future to provide pensions for those who are serving them to-day. In this the profession is falling behind the modern practice of industry and commerce, which is increasingly seeking to attract and retain good employees by assuring proper pensions on retirement. It is generally recognised in the profession that good managing clerks are becoming increasingly scarce. Lack of assured pensions has certainly something to do with it." The Law Society is trustee of the fund, which is administered by a committee of management composed of practising solicitors and managing clerks who give their services voluntarily. The secretary of the fund, it is stated, will give every inquiry the closest attention. The offices are at 2 Stone Buildings, Lincoln's Inn, W.C.2.

The Landlord and Tenant (Rent Control) Act, 1949, and Mortgagees

THE Worshipful Company of Solicitors' February *Newsletter* also refers to a paragraph in the *Law Society's Gazette* for last August warning solicitors about the unintended result of s. 2 of the above Act, namely, that if a long lease is granted at a so-called ground rent which is at least two-thirds of the net rateable value of the property it may be virtually impossible for the lessee to obtain a mortgage. As was pointed out in the *Gazette* this is because, except where the ground rent is less than two-thirds of the net rateable value, there is a prohibition against obtaining any premium on assignment; as a result the mortgagee's power of sale is worthless. The Law Society has reason to suspect that there are many cases throughout the country where property is held on leases at ground rents which are at least two-thirds of the net rateable value, and mortgagees of them may find that they are unexpectedly prejudiced by the provisions of s. 2. It is known, for example, that such leases have been granted in certain areas where new towns are being built under the New Towns Act, 1946, and correspondence on the subject has taken place between The Law Society and the Ministry of Town and Country Planning. The Ministry are considering the desirability of introducing amending legislation and it is clear that they will largely be influenced by the extent to which leases of this nature have in fact been granted. The Law Society has asked the Company to furnish particulars of any such cases and members who know of any are therefore requested to supply to the clerk a short account of the facts, including the amount of the ground rent, the rateable value of the premises and the number of years which the lease has yet to run. It is not necessary to furnish actual names.

Motor Covenant Appeal

A DECISION of HUMPHREYS, J., referred to in an article at 94 SOL. J. 731, was reversed by the Court of Appeal on 20th February (*The Times*, 21st February). In *Monkland* v. *Jack Barclay, Ltd.*, Humphreys, J., held that cars ordered in the interregnum period between the end of the Government licensing scheme on 31st December, 1945, and the commencement of the British Motor Trade Association's covenant scheme on 15th August, 1946, must be supplied free of covenant; he declined to import a condition *ex post facto* into the contract to the effect that the purchaser should enter into a covenant. ASQUITH, L.J., however, held that in the special circumstances of this case there was no absolute obligation on the appellants to deliver the car by a given date, but merely to "use their best endeavours" to secure delivery within a "reasonable time." A "reasonable time" meant reasonable in all the circumstances, which would include circumstances supervening later and hampering performance (see *Hick* v. *Raymond* [1893] A.C. 22). The adherence of Bentley's to the covenant scheme was just such a circumstance. No endeavours by the defendants, good, bad, indifferent or "best," would get Bentley's to budge from their attitude of "no covenant, no car." On the point that it would have been against public policy for the appellants to have delivered a car without receiving a covenant, Asquith, L.J., said that the merits of the covenant scheme and the alleged disadvantages to the public of not enforcing it did not seem to the court to be "in the least incontestable."

Restoration of Land after Iron Ore Workings

THE Mineral Workings Bill, published on 15th February, provides for an Ironstone Restoration Fund to be established to restore land after iron ore working. The Bill also contains clauses affecting the payment of development charges and the receipt of payments from the £300,000,000 fund. In June, 1949, the Chancellor of the Exchequer promised that mineral undertakers would get a full payment from the £300,000,000 for land held by them when the Town and Country Planning Act, 1947, came into force. The Bill contains a provision for setting off development charge against payments from the £300,000,000 in these cases. There are in addition certain minor amendments to the Town and Country Planning Act affecting mineral working generally, including a clause to enable highways to be diverted temporarily.

Costs

INCIDENCE OF LIABILITY—I

WE are asked from time to time upon whom the incidence of liability for solicitors' costs in particular circumstances falls, for it is not always the person who instructs the solicitor who is required, by law or custom, to shoulder the burden of the latter's costs.

Thus, to take a common case, the person who instructs a solicitor to prepare a mortgage deed, and from whom the solicitor takes his instructions, is not the person who normally pays the solicitor's costs in connection therewith. The agreement between the parties for a loan secured by a mortgage may make provision for the costs of the mortgagee's solicitor, but in the absence of any provision in the agreement between the parties in relation thereto, is there any existing law or custom on the subject ?

The answer is that there is a well-established custom that the solicitor for the mortgagee may look to the mortgagor to pay the costs of preparing and completing the mortgage. Indeed, this rule was well established more than 100 years ago, for in 1856, in the case of *Wilkinson* v. *Grant*, 18 C.B. 319, evidence was produced, and was accepted by the court, that it was the normal usage and custom amongst lenders and borrowers for the mortgagor to pay the mortgagee's solicitor's costs, so far as completed transactions are concerned, and it was shown to be customary for the mortgagee's solicitor's costs to be deducted from the amount of the advance.

In fact, the same proposition was relied upon in the case of *Pratt* v. *Vizard* (1833), 5 B. & Ad. 808, and that case established the principle that the implied agreement was between the mortgagee and the mortgagor, and not between the mortgagee's solicitor and the mortgagor, so that if the former was unable to recover his costs from the mortgagor then his right of action was against his own client, the mortgagee, leaving the latter to seek whatever remedy was open to him from the mortgagor.

These cases, however, dealt with completed transactions, but the case of *Wilkinson* v. *Grant*, *supra*, also established the further principle that there was no custom or usage which made the prospective mortgagor liable for the proposed lender's costs where the transaction was not completed, even where the failure to complete was due to the default of the mortgagor. The same principle underlies the decision in the case of *Melbourne* v. *Cotterell* (1857), 5 W.R. 884. In that case there was an agreement that the plaintiff should lend the defendant a sum of £2,000 secured on various assets, and after investigation of the title by the plaintiff there appeared to be defects which the defendant either could not or would not remedy. Earle, J., however, found that there was no rule of law or any established custom which would require the proposed borrower to pay the costs of the proposed lender in respect of the investigation of title up to the time when the deal was abandoned.

In short, a mortgagee's solicitor is by custom or usage normally paid by someone other than the person who retains him, but if he is not paid by that party, or if the transaction is not completed, then he will look to his own client, the mortgagee or proposed mortgagee, for payment of his costs. If the intending lender requires that the borrower shall pay the whole of the solicitor's fees in any event, whether the mortgage is completed or not, then he must enter into a specific agreement with the proposed borrower to that effect.

It is reasonable to suppose that the rule of custom contemplates the normal case of a lender and a borrower, so that there would be only the costs of one mortgagee's solicitor for the borrower to pay. If, therefore, there are several lenders in respect of the one loan and they all elect to be represented by separate solicitors, the custom does not extend to the payment of all these separate solicitors' costs by the mortgagor, and it is not considered that he will be liable for more than one set of costs. The remainder of the mortgagees' solicitors' costs must be paid by the mortgagees themselves. If it is desired that the mortgagor shall be responsible for all the costs, then the several mortgagees cannot rely on custom, and must agree with the mortgagor in respect thereof before the mortgage is completed.

This simple case of the preparation and completion of a mortgage deed is one example of the incidence of liability in relation to costs falling on a party other than the one who retains the solicitor. Following up this example, it is, again, a well-established rule of some antiquity that the mortgagee's costs arising from the necessity to enforce his rights are payable by the mortgagor (see *Anonymous* v. *Trecothick* (1813), 2 V. & B. 181, and the earlier case of *Detillin* v. *Gale* (1802), 7 Ves. 583). In the former case, Eldon, L.C., underlined the principle by observing that cases might arise where it was reasonable and proper, however, to deprive the mortgagee of his costs in certain circumstances. In any case, the court or judge now has complete discretion in the matter of costs in respect of proceedings in the Supreme Court by virtue of R.S.C., Ord. 65, r. 1, whilst, so far as the county court is concerned, a similar discretion is vested in the court by reason of Ord. 47, r. 1, of the County Court Rules, 1936, as subsequently amended.

Similarly, where the mortgagor desires to redeem the mortgage, he will have to bear the mortgagee's costs in relation thereto, and this will include the whole of the mortgagee's solicitor's costs, including those incurred in obtaining his client's instructions, and the preparation and completion of the statutory receipt or the reconveyance, including the costs of any journeys reasonably and properly undertaken in connection with the business, as well as the expenses incidental thereto.

Again, the custom or usage, although demanding that the mortgagor shall pay the mortgagee's solicitor's costs in these circumstances, cannot be extended to warrant the inclusion of exceptional or unnecessary costs, so that where again there are two or more mortgagees then only one set of solicitor's costs can normally be charged against the mortgagor.

It will be seen from what has been written above that the incidence of a mortgagee's solicitor's costs in connection with the completion, enforcement and redemption of the mortgage falls, by custom or usage, on the mortgagor, but that in the main those costs should not be increased by unnecessary or exceptional expenses.

Certain costs in connection with leases are another example where the incidence of liability falls on a party other than the one who retains the solicitor. Thus, it was found as long ago as 1836, in the case of *Grissell* v. *Robinson*, 3 Bing. (N.C.) 10, that the usual course of business is for the lessor of property to prepare the lease and for the lessee to pay the expenses in connection therewith. This custom has persisted in London and in the greater part of England to date, but in the case of *Re Negus* [1895] 1 Ch. 73 it was held on a review of taxation that although the lessee was bound by custom to pay the lessor's costs of preparing the lease, he was entitled to a deduction from the scale fee under Sched. I, Pt. 2, of the General Order, 1882, for the cost of engrossing and stamping the counterpart. Such, however, was not the normal practice, and the custom was, and still is, at any rate in London, and

in most of the country for that matter, for the lessee to pay the lessor's costs in respect of the lease and the counterpart.

No such custom prevails so far as tenancy agreements are concerned where the agreement is under hand for a period of less than three years, and in these cases the costs usually fall, in the absence of agreement to the contrary, on the party who retains the solicitor.

Yet another example of costs which, by custom, fall upon a person other than the one who retains the solicitor is the case of marriage settlements. The costs of preparing and obtaining completion of marriage settlements, whether of the wife's or the husband's property, are, by custom, payable by the husband (see *Hayward* v. *Fiott* (1837), 8 C. & P. 59, N.P., and *de Stacpoole* v. *de Stacpoole* (1887), 37 Ch. D. 139). The reason for this custom, or rather the origin of the custom, is very simple. Prior to the passing of the Married Women's Property Act, 1882, a husband was liable to pay his wife's ante-nuptial debts, and, accordingly, he would have to pay his wife's solicitor's bill of costs in connection with the preparation of the marriage settlement, if his wife did not pay those costs before marriage. With the passing of the above Act, the husband's liability for his wife's ante-nuptial debts was limited to the value of the property to which he became entitled as a result of the marriage. The reason and the necessity for the custom thus began to fade, but the custom persisted. Now, since the passing of the Law Reform (Married Women and Tortfeasors) Act, 1935, the husband is no longer liable for his wife's ante-nuptial debts, but still the custom, which commenced a very long time ago when it rested on a logical basis, prevails.

The liability of the husband extends not only to the preparation and completion of the actual settlement, but also to all " muniments of title or documents of that kind, without which the marriage settlement is not complete," *per* Kekewich, J., in *Re Lawrance; Bowker* v. *Austin* [1894] 1 Ch. 556. Indeed, it is thought that the husband's liability even extends to the costs of preparation of any necessary documents before the actual marriage settlement is drawn, which may be necessary in order to put the wife in possession of the funds which she intends to settle. This seems to follow from the observations of Kekewich, J., in *Re Lawrance, supra;* and see also *Helps* v. *Clayton* (1864), 17 C.B. (N.S.) 553. As we have noticed, although the factor underlying the custom has long since gone, the custom still remains, and, until it is upset by legislation or otherwise, it seems that it must remain *in toto*.

There we must leave the matter for the moment, but in our next article we will consider other cases where the incidence of costs falls on someone other than the person who retains the solicitor.

J. L. R. R.

A Conveyancer's Diary

THE ART OF DRAFTING

CONSIDERING the extremely important place that conveyancing occupies in almost every solicitor's practice in this country, it is astonishing that we should have had to wait until the other day for the publication of the first book ever to appear in England with the art of drafting as its subject. The publication of " The Elements of Drafting "* is therefore a matter of unusual interest for conveyancers.

This is not, however, an entirely new book. The articles which now form its chapters were first used as lecture notes, and subsequently published in book form in Australia. The book has now been revised for publication in England by the substitution of English references for Australian in the illustrations used, and by the addition of some discussion of practical points which, the authors say in their preface, are peculiar to English law. Whatever the degree of revision which may have been required for this edition, the finished product shows no signs of adaptation: it is a well-balanced survey of the subject of which it treats.

The history of this book of itself indicates the advantages with which the authors started. The art of drafting, which consists in the preparation of legal drafts which are at once succinct, clear and comprehensive (or which, at any rate, attain the highest degree of any one of these qualities that due regard for the others will allow) cannot be taught by rule of thumb. Some, indeed, will say that it can only be taught by practice under a good master, and there is a good deal of truth in that; but the beginner can certainly be taught with some effect to aim at habits of thought and formulation of ideas by general precept if it is accompanied by good illustrations. And this is where the authors of this book score every time: their illustrations are excellent, and they are excellent, one feels, because they have been tried out on a living audience as well as on the reader.

A few examples will show the felicity of the authors' choice in this respect. Thus, on pp. 22–23, as an illustration of the greater clarity to be achieved by good arrangement of the various parts of a sentence, there is given the following clause from the rules of a pension scheme:—

> " The trustees may, in their absolute discretion, surrender, cancel or otherwise deal with any benefit that under the scheme is provided for the member, so as to obtain reimbursement of the amount unpaid by him."

It is suggested that this should be rearranged to read:—

> " To enable the trustees to obtain reimbursement of the amount unpaid by any member, they may, in their absolute discretion, surrender, cancel or otherwise deal with any benefit provided for him under the scheme."

Intricacy of expression cannot always be avoided, but there are some draftsmen who go out of their way to complicate their drafts, perhaps because of a feeling that simplicity does not become a legal document. These draftsmen will not benefit, but others certainly may, from the section of this book which deals with intricacy of expression, and which ends with the following paragraph (p. 48):—

> " ' To or by direction of or for the benefit of members ' is a simple instance of a form of construction that can easily become involved. ' To members or by their direction or for their benefit ' would be written by anyone not a lawyer."

Cumulative negatives are often the result of laziness, since a little forethought will almost always indicate some simpler form of expression which avoids a series of negatives. An example of awkward expression is given on p. 112:—

> " Notwithstanding anything in clause . . . the scale of contributions need not be recalculated at intervals of not more than three years if the trustees and the representatives of the contributors so agree."

This clause, it is suggested, should be rephrased:—

> " Notwithstanding anything in clause . . . the scale of contributions need not be recalculated in any year in which the trustees and the contributors agree that a recalculation shall not be made."

* By E. L. Piesse and J. Gilchrist Smith. Stevens & Sons, Ltd. 10s. net.

The authors of this book are thorough-going modernists and have little use for the lumber which still clutters up so much of the conveyancer's work to-day. Such habits as the repeated use of the expressions "the said" and "aforesaid" where they can add nothing to the sense of a draft come in for some hard words; but there is nothing fanatical about the approach of the authors to any problem with which they deal, and in the case of expressions which are regarded as antiquarian by everybody except a lawyer the injunction to avoid their use whenever possible is followed by the qualification "except where they are clearly the best words." And very often the "hereinbefore's" and the "thereto's" which appear so barbarous to the well-educated layman, and matter for music-hall jokes to others, are the best words, if brevity is to be attained without the sacrifice of clarity. But there is a great deal to be said in favour of scrapping for good and all such inutile archaisms as the verbal ending in "-eth," however shocking the thought may be to the more conservative-minded practitioner, and indeed for the substitution for the hallowed phrase "Now This Deed Witnesseth as follows" of a more up-to-date equivalent, such as "This Deed Witnesses." This was one of the suggestions made in this "Diary" in the issue for the 22nd December, 1945, when a specimen conveyance with a completely "new look" was published here as an exemplar of what a modern draft would look like if old prejudices (and old books of precedents) were not so sedulously cultivated by the profession.

But I do not wish to frighten those of my readers who still maintain that the old ways are the best, in conveyancing matters at least, from reading this book, which has much to teach every conveyancer, old as well as young. The excellent sections on the use of the future tense in drafts and on some of the problems connected with the use of conjunctive and disjunctive participles will alone repay study, and the chapter on draftsmen's habits which should be avoided is equally good. These are the parts of the book which particularly appealed to me, because they deal with certain misuses of the language which lead to inaccuracy as well as to inelegance, but the whole book is full of good advice, which loses nothing of its quality by being given in a thoroughly practical manner. I cannot do more than commend it to my readers, particularly to those who have articled clerks in training under them at present. It will refresh the practitioner, even the man who thinks that he knows all about drafting legal documents, and save the beginner from many errors the consequences of which are not always apparent until they have become serious.

"A B C"

Landlord and Tenant Notebook

STATUTORY RESTRICTIONS ON WITHHOLDING CONSENT

Re Smith's Lease; Smith v. *Richards* (1951), 95 SOL. J. 121, appears to have sealed the fate of one device designed to counteract the effect of the Landlord and Tenant Act, 1927, s. 19 (1), which imported into any covenant against alienation without the consent of the landlord a proviso to the effect that consent should not be unreasonably withheld. The covenant in the lease in question, after providing that the lessee should not assign, etc., without the previous written consent of the lessor, such consent not to be unreasonably withheld, was followed by its own proviso in these terms: ". . . that any refusal by the lessor to consent to any particular assignment, etc., shall not be deemed to be an unreasonable withholding of consent by reason only that the lessor at the time of intimating any such refusal may offer to accept from the lessee a surrender of the tenancy hereby created, and in the event of any such offer being made by the lessor the lessee within three calendar months after receiving such offer shall either withdraw his application for the lessor's consent to assign, etc., the said premises or shall surrender to the lessor the tenancy hereby created." A rather more elaborate instrument than the more usual provision simply obliging the tenant to accompany his application by an offer of his own to surrender, and the cumbersome nature and compulsory delay invite reflection and argument; it is not surprising that the judgment contains the laconic statement: "Thereupon the solicitors embarked on a correspondence."

That was after the lessee, who sought a declaration, had (in the third year of his seven-year lease of a flat) asked the defendant lessor to consent to an assignment to an assignee of unimpeachable character, and the lessor had offered, in accordance with the provision in that behalf, to accept a surrender. The declaration sought was one that the refusal was unreasonable and that notwithstanding such refusal the plaintiff was entitled to assign the lease to the proposed assignee without any licence from the defendant.

Examining the position, Roxburgh, J., held that (the refusal being unreasonable in itself) the question was whether parties could curtail the operation of s. 19 by postulating in the lease that certain things should, or should not, be deemed unreasonable. The question could, the learned judge pointed out, be answered on *reductio ad absurdum* lines "on the principle that, if it were possible . . . they could surely stipulate that nothing should be deemed to be unreasonable, and that would be a complete stultification of the Act."

Roxburgh, J., considered, moreover, that *Balfour* v. *Kensington Garden Mansions, Ltd.* (1932), 49 T.L.R. 29, covered the matter by implication, and that *Creery* v. *Summersell and Flowerdew & Co., Ltd.* [1949] Ch. 751 covered it expressly. In the former the covenant stipulated that the lessors might, as a condition of giving consent to an assignment or sub-letting, require the proposed assignee or sub-lessee to enter into direct covenants with them to perform all the tenant's covenants, "*and* non-compliance with such condition shall be deemed to be a reasonable ground for refusing such consent notwithstanding the respectability and financial responsibility of the proposed assignee or underlessee." It was not so deemed by Macnaghten, J., who, though the landlords had felt some uneasiness because the proposed underlessee was to pay £450 while the rent reserved by the head lease was £750 a year, and had demanded a direct covenant, held that in the circumstances they had unreasonably refused their consent. The judgment did not, in terms, draw attention to the impossibility of contracting out, but the conclusion could not be reached otherwise than on the basis that the "and non-compliance" part of the provision was, in view of the "notwithstanding any express provision to the contrary" in the subsection, void.

In *Creery* v. *Summersell* the landlord had purported to "reserve the right to decline to give his consent if in his opinion the proposed underlessee was for any reason in his discretion undesirable as an occupant or underlessee," and

Harman, J., held that this was a reservation of rights which were invalid as far as they went beyond s. 19 (1) (*a*) of the Landlord and Tenant Act, 1927. "Reasonableness is the only touchstone by which the validity of a refusal of consent must be tested."

The question of what is reasonable, Roxburgh, J., said, was an objective one, which had to be decided without regard to the interpretation which the parties had put on that expression.

The covenant began (according to the report in [1951] 1 All E.R. 346) by providing that the lessee would not at any time assign, underlet or part with possession of the said premises or any part thereof for all or any part of the tenancy thereby created "to any person of colour (such prohibition against a person of colour being absolute)," then proceeding "nor without the previous written consent of the lessor," etc. An interesting argument might have arisen if the proposed assignee, who had a permanent position at the Colonial Office, had happened to be a person of colour. The lessor would doubtless have urged that the provision was in fact two covenants, one absolute and not affected by the Landlord and Tenant Act, 1927, s. 19 (1), the other admittedly "a covenant against assigning the demised premises without licence or consent": the argument (though the subsection says "a covenant condition *or agreement*") appears to be a valid one, and the limitation, therefore, not an "express provision to the contrary" attracting a proviso "that such licence or consent is not to be unreasonably withheld." Reference was made to this type of covenant in the "Notebook" for 29th May, 1948, the conclusion as regards enforceability of an absolute covenant prohibiting alienation to a class, whether it be persons of colour, vegetarians, lawyers or what, being that it would be valid. Whether the covenant mentioned in *Re Smith's Lease* would necessarily achieve its object completely is another matter; it would not affect involuntary alienation, so a tenant could effectively devise his tenancy to a person of colour (see *Fox* v. *Swann* (1655), Sty. 482); nor does it extend to sharing possession or occupancy, so (see *Chaplin* v. *Smith* [1926] 1 K.B. 198 (C.A.)) could not prevent the flat being occupied by a spouse of a tenant, and by their children, who were persons of colour.

However, if there were two separate and distinct covenants, I think that the landlord could enforce the absolute one. Rather more difficult is the question whether an obligation to accompany an application for consent by an offer to surrender would be invalid as being "an express provision to the contrary." In my view, the tenant would in this case be on stronger ground; not only because the two provisions could only operate together, but also because of the "repugnancy to grant" element in the provision for an offer.

No mention was made, in the recent case, of the decision in *Moat* v. *Martin* [1949] 2 All E.R. 646 (C.A.), nor was such mention necessary; but the case was interesting as affording an illustration of the fact that a qualification need not conflict with the statute. A general provision not to assign without the landlord's consent was followed by the words "such consent will not be withheld in the case of a respectable and responsible person." By this, it was held, the landlord had precluded himself from attempting to restrain alienation by reference to what was "reasonable": he had undertaken to consent once the candidate was respectable and responsible, regardless of whether it was reasonable or not to consent; the Landlord and Tenant Act, s. 19 (1), could not, therefore, operate.

The decisions remind us that the legislation in question is not concerned with any standard type of covenant to be found in precedents; there is still scope for originality in draftsmanship. Indeed, the subsection that follows, affecting leases "containing a covenant condition or agreement against the making of improvements without licence or consent" provoked the following observation from Luxmoore, J., in the course of his judgment in *Balls Bros., Ltd.* v. *Sinclair* [1931] 2 Ch. 325: "Personally I have never heard of 'a covenant against making improvements' *totidem verbis*, nor have counsel engaged in the case."

R. B.

PRACTICAL CONVEYANCING—XXIX

Deserted Tenements

If one can judge by the comments made to the writer on the notes published recently in these columns, the number of tenants who disappear and leave rent owing is very considerable. Some useful suggestions have been made for getting over the difficulties of the landlord, and one of them deserves particular note.

A firm of solicitors have written to say that they have just completed successfully a resort to the procedure contained in the Distress for Rent Act, 1737, as amended, for obtaining possession by order of the justices of a lock-up shop in Manchester. Arrears of rent were owing in respect of a period of over two years and the tenant did not appear to be using the premises. The troublesome feature of the case was that a few unidentifiable goods could be seen which might have been available for distress. An order for the affixing of the necessary notices was made and, although the tenant did not appear or tender the arrears of rent, there was some additional activity and a number of packing cases were deposited in the shop. An order for possession was made on the ground that even if distrainable goods were on the premises they were not available to the landlord because he was not allowed to break open the door to get at them.

The Distress for Rent Act, 1737, s. 16, states that the view of the premises shall be carried out if the tenant "who shall be in arrear for one year's rent, shall desert the demised premises and leave the same uncultivated or unoccupied, *so as no sufficient distress can be had.*" If the landlord cannot distrain because he is unable to effect entry it seems quite justifiable to argue that "no sufficient distress can be had." The difficulty is, however, that the Act provides that "if upon the second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, *or there shall not be sufficient distress upon the premises*" then the justices may put the landlord in possession. In the first place, it seems clear that this is one of the occasional cases in which "or" must be read as "and." Obviously an order could not be made merely because there was no sufficient distress if the tenant paid the arrears. But can one say that there is no sufficient distress upon the premises if there are goods which may be sufficiently valuable but the landlord cannot break in to distrain? One must note the difference between the words, "not be sufficient distress *upon the premises*," and the words used earlier, "no sufficient distress *can be had.*" One would expect the justices to be sympathetic towards a landlord and to find as a fact that there was no sufficient distress if evidence could be brought to show that any goods are unlikely to be of appreciable value. In the case mentioned by our correspondents it seems that the value of the goods was doubtful and so it was most convenient that the justices accepted the argument that the inability of the landlord to enter enabled an order to be made. It should be noted, perhaps, that the further argument was advanced that the burden is on the tenant, on the second view of the premises, to pay the rent or to make sufficient distrainable goods available.

A High Court decision on the matter would be useful, but in the meantime solicitors may find the above contentions well worth advancing in order to get a landlord client out of a difficulty. Having regard to the object of the procedure, these contentions seem to involve quite a reasonable construction of the section.

Service of Notices

As a result of the comments made on the same topic, the writer has been asked to express his opinion on the effect of the Law of Property Act, 1925, s. 196 (5), and on the bearing of that subsection on the serving of notices to quit. This provision is not very well known and the writer must admit that he has often been so doubtful about its effect that he has avoided committing himself to a firm expression of opinion.

Section 196 (1) states that notices "required or authorised to be served or given *by this Act* shall be in writing," and enables them to be served, for instance, by registered post. Subsection (5) is as follows: "The provisions of this section shall extend to notices *required to be served by any instrument* affecting property executed or coming into operation after [1925] unless a contrary intention appears." In the first place, then, the subsection is of no effect unless there is an instrument affecting the property. Secondly, one notes immediately that, whereas subs. (1) refers to a notice *required or authorised* to be served, subs. (5) extends only to notices *required* to be served. The problem is to determine when a notice is "required" to be served and not merely "authorised" to be served.

In the first place we can dispose of the case of premises held on a periodic tenancy created by an instrument which does not refer to termination by notice. In this case it seems to be quite clear that a notice to quit is not a notice required to be served by the instrument creating the tenancy. The more difficult cases are those in which there is a fixed term determinable by notice before its natural expiration or a periodic tenancy determinable by a notice of specified length. In all such cases the writer is of the opinion that, although the notice may be authorised by the instrument, it is not required to be served by the instrument. If this view is correct, s. 196 is of no assistance to a landlord proposing to serve a notice to quit. Perhaps it is significant that text-books such as Hill and Redman and Woodfall discuss the section with reference to notices under s. 146 (dealing with re-entry), but do not note it on the subject of service of notices to quit.

Quite a number of text-books in comments on s. 196 suggest that the effect of subs. (5) is to enable instruments relating to property to be shortened by the omission of provisions about service of notices. Although some provisions, for instance in leases, require notices to be served, such provisions must be few by comparison with the number of terms authorising service. Presumably a covenant that the landlord will do an act—for instance, will repair premises—on notice being served by the tenant does not require the notice to be served; it merely confers a right on the tenant if he thinks fit to serve the notice. Consequently the writer inclines to the view that, as regards notices provided for by instruments, the section is of very little value, and an express provision should be inserted in leases or other documents in wider terms.

J. G. S.

HERE AND THERE

POVERTY ON THE BENCH

Parliament has lately shown a certain awareness that as the cost of living climbs the vicious spiral, His Majesty's judges cannot be left indefinitely stranded among the lower circlings of its convolutions. During the Church House Inquiry nothing apparently impressed on the American mind so vividly the notion of the decline, fall and general economic penury of Britain as a newspaper photograph of Lynskey, J., waiting in a bus queue. (On circuit it may be the High Sheriff's limousine or even a state coach, but in London it's the Transport Commission and take your turn.) Well, since then we've had the contributory pensions scheme for the widows and children of judges. More recently, when Viscount Simon in the House of Lords, supported by the Lord Chief Justice, told the sad tale of the forgotten men of the County Court Bench, fighting a losing battle against taxation and the cost of living on their £2,000 a year (gross), the only assurance the Lord Chancellor could give (without promises and without hopes) was that the Government would examine the matter in the light of the debate. Meanwhile we see chill penury depress the learned sage and freeze the genial currents of his soul. Lord Goddard considered the county court judges as "seriously—perhaps grossly—underpaid." Lord Simon drew a sombre picture of them "haunted by financial worries, which gravely threaten the discharge of their duties." Lord Jowitt himself was anxious lest present prospects should not attract suitable men, though he would not have it supposed that recent appointments had been "below the appropriate standard."

MONEY WORRIES

Financial anxieties at judicial level are not, of course, a novelty of our times. With an adequate disregard for care and attention it was always possible to run into them, while, even to-day, it is doubtless possible to avoid them, provided one is content (and one's nearest and dearest, if any, are likewise content) to like the life of a fakir; just at present it is hard to see how else one can avoid them. Even after the lapse of a quarter of a century it is probably kinder not to mention the name of the Midlands county court judge whose affairs became so embarrassed that a judgment summons was issued against him in his own court. The case was called on. There was no answer. The judge directed the usher to call it again outside. Still no answer. "Very well," he said, "let there be judgment." Poor man! He had to resign soon afterwards. They say it was good living (in the gastronomic sense) that unbalanced his budget. But then even the pinnacle of the Chancellorship is not necessarily above flood level when it comes to financial embarrassment. Certainly the glittering rewards of the Great Seal together with the antecedent proceeds of a fabulously lucrative practice were barely sufficient to cope with the full, rich life indefatigably pursued by the first Lord Birkenhead. Whoever may have looked like "a shabby old gentleman with five thousand a year" (you remember Lord Halsbury's description of retired Lord Chancellors) it was never Lord Birkenhead. His financial thinking was not at that level.

NO GOOD STRIKING

A lot of water has flowed past Temple Stairs since Lord Halsbury's *dictum* and for those who on paper constitute the upper income groups, £5,000 (gross), taking into account their financial responsibilities, is somewhere about subsistence level but not much above it. Unfortunately, unlike railwaymen and miners, the judges have no trade union, no strike weapon available in pressing their just demands for higher wage rates. Since Serjeants' Inn vanished in the last century and they were taken into the Inns of Court, they have tended rather to be ornamental appendages in societies dedicated primarily to the interests of the Bar. As a means of bringing pressure to bear on the Government a strike would be singularly unrewarding. The Executive couldn't care less. It would be relieved of the distress of quite a lot of analytical and specialised criticism of the ways of Government departments and the drafting of Acts of Parliament, for from Lord Hewart and "The New Despotism"

onwards there has been a marked tendency on the Bench to look every statutory gift horse very steadily in the mouth. If the judges were to strike the authorities would send in the Army or the Navy to man the Royal Courts of Justice with far less hesitation than if they were dealing with a gasworks or a coal mine. Unfortunately present conditions somewhat weaken the argument that present rates of judicial pay will not attract the best men. The level of taxation having made it virtually impossible even for the successful to save for their superannuated years, a pension, settled and assured, however modest, represents a far more powerful attraction than formerly.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Legal Aid Scheme: Taxation of Costs

Sir,—Your article dealing with costs under the Legal Aid Scheme suggests that much extra manpower will be required to cope with the four or six column bills which will have to be lodged for taxation.

We should like to suggest that a great deal of time, energy and paper could be saved if we were enabled to submit lump sum bills with schedules of disbursements attached. Any experienced taxing officer, after reading the relevant documents in a case, must have a shrewd idea of what would constitute a fair figure for profit costs, and the solicitors and parties concerned could be protected by being given the right to present or demand an ordinary detailed bill if they were not prepared to accept the ruling given on the lump sum bill.

If the experiment was successful in the whole or some part of the legal aid field (and we believe that, in practice, very few itemised bills would be called for) it could be brought into more general operation to the great relief of our profession as a whole.

Peterborough. GREENWOODS.

Legal Aid in Operation

Sir,—The Legal Aid Scheme has been operating long enough for some opinion of its efficiency to be formed. In the provinces the general view is that there is room for improvement.

A high proportion of the appointments to the local committees appear to be conveyancing men, with the result that the authority has passed into the hands of the unqualified secretary.

There is unnecessary delay in arriving at a decision, sometimes amounting to weeks. The emergency certificates are there for emergencies but the temptation is to apply for these in normal circumstances.

In practice the committees will issue a certificate in non-matrimonial cases only where there appears to be an "open and shut case." They ask for cases to be fully prepared before they will consider issuing a certificate, ignoring the fact that the solicitor concerned will not get paid for this work as it occurs before the date of issue.

Taxation on "Solicitor Client Common Fund" scale is supposed to be "party and party" on a more generous scale. In practice the taxing officials are less generous in legal aid taxations than in any other. They voice the view that they are there to protect the taxpayer and they are "leaning over backwards" to avoid the appearance of being too generous on taxations. This results in solicitors having to bear the burden of perfectly normal disbursements out of their own pockets. Counsel are having their fees scaled down considerably. After all this there is a further deduction of 15 per cent. and some delay before payment is made.

Nobody wants to make a fortune out of the Legal Aid Scheme, even if that were possible, but if the labourer is worthy of his hire, then the professional man can ask that he should not be out of pocket for the privilege of working.

Yorkshire. CALIBAN.

Proposed New Cheque Form

Sir,—You refer in your issue of 24th February (p. 114) to the above subject.

To make any alterations will add further to the complexities which now trouble us all. It seems very doubtful if there is any demand for a change from the present long-established cheque system. Many more people than formerly have bank accounts, and there are also others who can pay cheques into post office and other savings accounts, and so the handing over of cheques to others to cash may not now be so frequent. There are, nevertheless, a great number of customers paying their shop accounts with cheques which have been passed to them. The suggested increase of duty to fourpence per cheque is not to be encouraged, as this again increases our money problems—it would be costly. Many receipts are for less than the £2 which necessitates a twopenny stamp. If there is to be a serious attempt to make an alteration the Bankers Clearing House should be approached. I, for one, am much against the proposal.

Sheringham, Norfolk. A. E. HAMLIN.

BOOKS RECEIVED

Dymond's Death Duties. Eleventh Edition. By R. DYMOND, Solicitor, formerly Deputy Controller of the Estate Duty Office, and R. K. JOHNS, LL.B. (Lond.), of the Estate Duty Office. 1951. pp. lxxxvii and (with Index) 856. London: The Solicitors' Law Stationery Society, Ltd. £3 15s. net.

Joint Torts and Contributory Negligence. By GLANVILLE L. WILLIAMS, LL.D. (Cantab.), Quain Professor of Jurisprudence in the University of London, of the Middle Temple, Barrister-at-Law. 1951. pp. l and (with Index) 558. London: Stevens & Sons, Ltd. £3 3s. net.

Lewin's Practical Treatise on the Law of Trusts. Fifteenth Edition and Supplement. By R. COZENS-HARDY HORNE, of Balliol College and Lincoln's Inn, Barrister-at-Law. 1950. pp. clxxviii and (with Index) 1010. London: Sweet and Maxwell, Ltd. £5 5s. net.

Ranking, Spicer and Pegler's Rights and Duties of Liquidators, Trustees and Receivers. Twenty-first Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A., and R. D. PENFOLD, LL.B., of Lincoln's Inn, Barrister-at-Law. 1951. pp. xxxiii and (with Index) 452. London: H.F.L. (Publishers), Ltd. 21s. net.

The Marriage Law of England. By J. C. ARNOLD, LL.B., of the King's Inns, Dublin, and of the Inner Temple, Barrister-at-Law. 1951. pp. xii and (with Index) 150. London: Staples Press, Ltd. 12s. 6d. net.

Hanson's Death Duties. Fourth Cumulative Supplement to the Ninth Edition. By JACKSON WOLFE, LL.D., of Lincoln's Inn, Barrister-at-Law, and HENRY E. SMITH, LL.B., of the Estate Duty Office. 1951. pp. xvi and (with Index) 141. London: Sweet & Maxwell, Ltd. 15s. net.

The Iron and Steel Act, 1949. With General Introduction and Annotations by W. GUMBEL, LL.B., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law, and K. POTTER, M.A., of the Middle Temple, Barrister-at-Law. Consulting Editor: C. PEARSON, C.B.E., K.C. Reprinted from Butterworth's Annotated Legislation Service. 1951. pp. xxxii and (with Index) 152. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

The Conveyancers' Year Book. Volume 10, 1949. By J. A. GIBSON, of Lincoln's Inn, Barrister-at-Law, assisted by C. N. BEATTIE and J. P. WIDGERY, of Lincoln's Inn, Barristers-at-Law. 1951. pp. xl and (with Index) 216. London: The Solicitors' Law Stationery Society, Ltd. 37s. 6d. net.

Benjamin on Sale. Eighth Edition. By The Hon. Sir DONALD LESLIE FINNEMORE, one of His Majesty's Judges of the King's Bench Division, Honorary Fellow of Pembroke College, Oxford, and A. E. JAMES, of the Middle Temple, Barrister-at-Law. 1950. pp. xlix and (with Index) 1091. London: Sweet and Maxwell, Ltd. £5 10s. net.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

COMMISSION AT PRINCIPAL'S DISCRETION: AGENT'S CLAIM TO ACCOUNT

Kofi Sunkersette Obu *v.* A. Strauss & Co., Ltd.

Lord Radcliffe, Lord Tucker, Sir John Beaumont and Sir Lionel Leach. 29th January, 1951

Appeal from a decision of the West African Court of Appeal affirming Smith, J., sitting as a Divisional Court at Kumasi.

The respondent company in 1942 engaged the appellant as an agent at a fixed monthly salary to purchase and ship rubber on their behalf. Commission was also to be "paid to me by the company which I have agreed to leave to [their] discretion." In 1945 the company instituted proceedings against the agent, claiming £365 as the balance due by him in respect of moneys drawn by him for his personal account. He counter-claimed for an account to be taken of all rubber shipped by him to the company from August, 1942, to January, 1945, and for commission on his purchases. This report concerns only that counter-claim, which the courts in West Africa rejected. The defendant appealed to His Majesty in Council.

Sir JOHN BEAUMONT, giving the judgment of the Board, said that cl. 6, which governed the defendant's right to remuneration, did not provide for the payment of any further sum by way of additional remuneration for the services of the agent on which a claim of *quantum meruit* might be founded. The only additional remuneration was to be a commission in the discretion of the company. The agent claimed a commission on rubber purchased or rubber shipped, but it was clear that the company would have to fix, not only the rate, but the basis, of the commission, and that basis might be a share of profits. The correspondence between the parties before the date of the agreement showed that it must have been in the mind of the agent that his commission might be based on profits. A commission based on profits would be rendered nugatory by the absence of profits. In their (their lordships') opinion the relief which the agent claimed, namely, an account and payment of commission based on rubber purchased or shipped, was beyond the competence of any court to grant: the court could not determine the basis and rate of the commission; to do so would involve not only making a new agreement for the parties, but varying the existing agreement by transferring to the court the exercise of a discretion vested in the plaintiffs. If the agent was not entitled to any commission, it was conceded that he could not claim an account. They (their lordships) would therefore humbly advise His Majesty that the appeal should be dismissed.

APPEARANCES: *Dingle Foot* and *T. O. Kellock* (*A. L. Bryden and Williams*); *W. A. Fearnley-Whittingstall*, K.C., and *P. Easton* (*Wm. Easton & Sons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

STATUTORY TENANT DYING INTESTATE: WIDOW'S CLAIM

Hosegood *v.* Moodie

Somervell, Singleton and Denning, L.JJ. 5th February, 1951

Appeal from Farnham County Court.

A contractual tenant of premises within the Rent Restrictions Acts died intestate. His widow claimed to be entitled to remain in occupation of the demised premises under s. 12 (1) (*g*) of the Rent, etc., Act, 1920, notwithstanding notice to quit. The county court judge made an order for possession because the deceased tenant had been a contractual tenant. The widow appealed.

SOMERVELL, L.J., said that in *Smith* v. *Mather* [1948] 2 K.B. 212; 92 SOL. J. 231; and *Thynne* v. *Salmon* [1948] 1 K.B. 482; 92 SOL. J. 83, it had been decided that the word "widow" in s. 12 (1) (*g*) referred only to the widow of a statutory tenant; and that court was clearly bound by those decisions. The appeal would be dismissed but, at the same time, he thought it a proper case for giving leave to appeal to the House of Lords, as the decision affected many other cases and Bucknill, L.J., had dissented in *Thynne* v. *Salmon*, *supra*. He thought it a proper case in which to order a stay on the terms that the defendant should lodge notice of appeal in a month and proceed with the appeal as quickly as possible. An application might be made to the House of Lords to expedite the hearing.

SINGLETON and DENNING, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *P. Wrightson* (*Jaques & Co.*, for *Potter, Crundwell & Bridge*, Haslemere); *Stuart Horner* (*Gibson and Weldon*, for *Macpherson & Lawson*, Hindhead).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

CHARITIES: VOLUNTARY FIRE BRIGADE

***In re* Wokingham Fire Brigade Trusts; Martin *v.* Hawkins**

Danckwerts, J. 1st February, 1951

Adjourned summons.

The voluntary fire brigade at W, which was formed in 1876, was until 1940 maintained by private donations and subscriptions and fees for attending fires; from 1940 to 1942 it received, in addition, a contribution of £250 per annum from the local rural district council, upon the understanding that the brigade would attend to fires within a specified area. In 1942, when the National Fire Service was set up, the brigade ceased to operate and sold its fire engines and other equipment to the National Fire Service for £1,645. The court was asked to determine how the money should be applied.

DANCKWERTS, J., stated that the fire brigade was a non-profit-making body formed at a public meeting for the public purpose of fighting fires in the W district. It was not formed for the benefit of the members of the brigade but to prevent damage and loss in that community. That was as much a public charitable purpose as the provision of a lifeboat, which in a number of cases had been held to be a public charitable purpose. The argument that those subscribing to the funds of the brigade were actuated by self-interest could not prevail; people might be induced by some selfish motive to subscribe to charitable purposes, and an appeal to self-interest did not make the object of an appeal non-charitable. The subscribers had intended to part with all their interest in the subscriptions as and when they paid them, and there was no resulting trust. Since 1942, the purpose for which the funds had been given and collected was no longer practicable but the charitable trusts on which those funds had been held did not fail, and, as they had been in operation for a number of years, there was no need to prove a general charitable intention. An order had to be made that the funds should now be applied *cy-près* by means of a scheme.

APPEARANCES: *H. Monckton*; *W. T. Elverston*; *J. L. Arnold* (*Soames, Edwards & Jones*, for *Cooke, Cooper & Barry*, Wokingham); *Denys B. Buckley*; *Newsom* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF Esq., Barrister-at-Law.]

UNIVERSITY: DEFINITION: RECOGNITION OF COLLEGE

St. David's College, Lampeter *v.* Ministry of Education

Vaisey, J. 8th February, 1951

Action.

The plaintiff college was founded for the purpose of training candidates for Holy Orders who could not afford to proceed to Oxford or Cambridge. It was founded in 1827, incorporated by Royal Charter of 1829, and further charters were granted in 1853, 1865 and 1896 as the result of which the college was authorised to confer on its students the degrees of B.D. and B.A. A pass course for the degree of B.A. and various honours courses were provided. The college applied to the Ministry of Education for recognition of its scholarships as being entitled to university supplemental awards, but the Ministry refused that request on the ground that according to the regulations made under the Education Act, 1944, s. 100, such awards could only be granted to students of an institution coming within the definition of a university or university college and that the plaintiff college was not so recognised by the Ministry. The plaintiff college claimed a declaration that it was a university and provided a university education.

VAISEY, J., said that the word "university" was not a term of art, and was difficult to define. Some institutions would, by

common consent, fall within the definition. The plaintiff college was admittedly a " borderline " institution, and was in its own class. Various tests had been suggested for the definition of a university, but the true test seemed to be what an ordinary man of good education of university standard would say if asked whether the plaintiff college was a university. The college was a small institution of some 170 students, with a limited power of granting degrees, and it seemed to fall short, in its rights and scope, of those institutions admittedly called universities, however closely it might approximate to them and however excellent the education which it provided might be. On the evidence before him, he (the learned judge) could not hold that the college had discharged the onus of showing that it was a university; but that was not to say that the college did not provide an education equally as good as elsewhere; and the result of the case should have no effect on the high reputation of the plaintiff college. Declaration that the plaintiff college was not a university.

APPEARANCES: *Sir Andrew Clark*, K.C., and *D. H. McMullen* (*Deacons & Pritchards*, for *Barker, Morris & Owen*, Cardiff); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

COMMITTAL TO QUARTER SESSIONS FOR SENTENCE: APPLICATION FOR BAIL

***In re* Whitehouse**

Lord Goddard, C.J., Humphreys and Devlin, JJ.
23rd January, 1951

Application for bail.

The applicant was convicted by a court of summary jurisdiction of feloniously receiving a postman's uniform, the property of the Postmaster-General, knowing it to have been stolen. The justices, having obtained information as to the applicant's character, committed him in custody to quarter sessions for sentence under s. 29 (1) of the Criminal Justice Act, 1948, which provides that " Where . . . a person . . . is tried summarily by a court of summary jurisdiction for an indictable offence, and is convicted by that court of that offence, then if, on obtaining information as to his character and antecedents, the court is of opinion that they are such that greater punishment should be inflicted in respect of the offence than that court has power to inflict, the court may . . . commit him in custody to quarter sessions for sentence . . . "

The applicant served notice of appeal against his conviction, and applied to the High Court to be admitted, pending the hearing of his appeal, to bail under s. 37 (1) (*a*) of the Act of 1948, which provides that " the High Court may release from custody a person who has given notice of appeal to a court of quarter sessions against a conviction or sentence of a court of summary jurisdiction, on his entering into a recognisance conditioned for his appearance at the hearing of the appeal."

The application came before a judge in chambers, who referred it to the Divisional Court.

LORD GODDARD, C.J., said that, when justices exercised their powers under s. 29 (1) and committed a person to quarter sessions for sentence, they had no power to grant him bail. But it was argued that the High Court had power to grant bail because of s. 37 (1) (*a*). The court thought that right. It was, however, a power which the court would exercise with extreme care, because it was curious that Parliament, having provided by s. 29 that a convicted person should go forward in custody to quarter sessions for sentence, should also have given by s. 37 this right of granting bail without any reference to s. 29. But the words of s. 37 were so wide that the court was of opinion that, if a notice of appeal to quarter sessions had been given, then the High Court had power to admit to bail a person convicted and sent forward for sentence to quarter sessions under s. 29.

HUMPHREYS and DEVLIN, JJ., agreed.

Counsel having addressed the court on the merits of the particular case, the application for bail was refused.

APPEARANCES: *G. R. F. Morris* (*Mawby, Barrie & Letts*, for *Silverman & Livermore*, Liverpool); *Glyn Burrell* (*The Solicitor, Post Office*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

PURCHASE TAX: DEFECTIVE INFORMATION: REASONABLE PARTICULARS OF CHARGE

Robertson *v.* Rosenberg

Lord Goddard, C.J., Humphreys and Devlin, JJ.
25th January, 1951

Case stated by Middlesex justices.

The prosecutor, an officer of Customs and Excise, preferred an information against the defendant alleging that he at a certain address " and elsewhere in London was knowingly concerned in the taking of steps with a view to the fraudulent evasion by him of purchase tax in respect of . . . textiles, contrary to s. 17 (1) of the Finance Act, 1944." Before the defendant had pleaded to the charge, his solicitor objected to the justices that the information was defective in failing to give particulars showing the precise nature of the charge or charges against him. It was admitted that the defendant had been supplied by the prosecutor with a schedule setting out 136 separate purchases of goods by the defendant from different persons. He contended that the case which the prosecutor intended to make against him was that he had falsely designated as " utility " goods (free of purchase tax) goods which should have borne purchase tax and had sold them under that false description, so that he was liable for the purchase tax on them; that he was accordingly liable to a very heavy penalty; and that he had made many purchases from fourteen different suppliers and had effected many sales to different persons at various dates. In those circumstances, he contended, he could not plead until he had full particulars of the alleged offence, which the prosecutor had refused to supply. The prosecutor contended that it was impossible to give particulars of the defendant's sales as only some of them were known; and that it was impossible to give particulars of " the taking of steps." The justices accepted the defendant's objection and, having given the prosecutor an opportunity, which was declined, of amending the information, dismissed it. The prosecutor appealed.

By s. 17 (1) of the Finance Act, 1944, it is an offence to be " knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of (purchase) tax."

By s. 30 (1) of the Criminal Justice Act, 1925, " Every information . . . shall be sufficient if it contains a statement of the specific offence . . . charged, together with . . . particulars . . . giving reasonable information as to the nature of the charge."

LORD GODDARD, C.J., said that an information which, in charging the defendant with being knowingly concerned " in the taking of steps, etc.," alleged no more than that he had been concerned in the taking of such steps, could not be said to have given him reasonable information as required by s. 30 (1) of the Act of 1925. The justices were accordingly right in dismissing it, since the prosecutor had declined the offer of an opportunity to amend it.

HUMPHREYS, J., said that the statement made on behalf of the defendant of the matters which he understood that the prosecutor proposed to prove against him deprived his valid technical objection of all merit, for it contained all the particulars to which he would have been entitled in the information. The proper course for the justices in those circumstances would have been to rule that the information was defective, but to hear the evidence, since the defendant by his statement had shown that he knew exactly what case was going to be made against him. He agreed, however, that the information was defective, and that it was on that account properly dismissed.

DEVLIN, J., agreeing that the appeal should be dismissed, said that, while one object of s. 30 (1) of the Act of 1925 was that a defendant should have reasonable information of the nature of the charge being made against him, it was doubtful whether the subsection did not also require that that reasonable information should be contained in the information itself. It was, therefore, also a matter of doubt whether, if the justices thought that the defendant knew from other sources the kind of matter on which the prosecutor proposed to rely, they should on that ground refuse to dismiss the information, although it was in itself defective.

Appeal dismissed.

APPEARANCES: *J. P. Ashworth* (*Solicitor for Customs and Excise*); *A. P. Marshall*, K.C., and *R. A. C. Hill* (*Tarlo, Lyons and Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

GAMING: FATHER'S PROMISE TO PAY

Coral *v.* Kleyman

Croom-Johnson, J.

29th January, 1951

Action.

The defendant's son owed the plaintiff, a bookmaker, £355 15s. in respect of lost bets. The defendant agreed in writing to pay that sum by 31st December, 1949, in consideration of the plaintiff's not reporting the son to Tattersall's. The defendant failed to pay the sum, and the plaintiff now sued to recover it.

CROOM-JOHNSON, J., said that in *Hill* v. *William Hill* (*Park Lane*), *Ltd.* [1949] A.C. 530, at p. 548; 93 SOL. J. 587, Lord Simon said that in such a case it was sought by a new contract to transform an obligation of honour into a legal liability, whereas it was clear that the sum of money sought to be recovered not only owed its origin to the fact that bets were made but was itself a sum of money so won. That *dictum* applied here notwithstanding that the defendant was not the person who had made the bets, but his father. The sum claimed was irrecoverable by virtue of s. 18 of the Gaming Act, 1845.

Judgment for the defendant.

APPEARANCES: *D. Weitzman* (*Hart-Leverton & Co.*); *C. L. Hawser* (*B. A. Perkoff & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PENSION: "SOLELY IN RESPECT OF LOCAL GOVERNMENT SERVICE"

Abbott *v.* London County Council

McNair, J.

8th February, 1951

Action.

From 1909 to 1st July, 1933, the plaintiff was employed as a servant of the defendant council in their tramway undertaking and was a member of their superannuation and provident fund. By virtue of s. 73 of the London Passenger Transport Act, 1933, she became on 1st July, 1933, a servant of the London Passenger Transport Board, for whom she continued to do work similar to that which she had formerly done for the council. She continued to be a servant of the board and a member of the council's superannuation and provident fund until she retired, on the ground of ill health, in August, 1938.

It was contended on her behalf that, by reason of s. 80 of the London Passenger Transport Act, 1933, and in particular by subss. (9), (10) and (11), her pension was one payable by a local authority solely in respect of local government service within the meaning of para. 1 of Pt. II of Sched. I to the Pensions (Increase) Act, 1944; and that, on the coming into force of the Pensions (Increase) Acts, 1944 and 1947, the council became bound to make increases in her pension to the extent therein provided for. She sought a declaration to that effect. The council contended that they had no power by virtue of the Acts of 1944 and 1947 to grant her an increase of pension since, they said, her pension was not one payable by a local authority solely in respect of local government service within the meaning of the Act of 1944. By s. 1 (1) of the Pensions (Increase) Act, 1944, a pension specified in Sched. I to the Act may be increased by the pension authority by an amount calculated under Sched. II. The pension specified in para. 1 of Pt. II of Sched. I is "a pension payable by any local authority solely in respect of local government service."

MCNAIR, J., said that in his opinion it was clear that "local government service" in para. 1 was limited to certain types of local government service. On the facts of the present case the plaintiff's pension was not a pension payable solely in respect of local government service, since it was admittedly payable partly in respect of her service as a transferred officer or servant of the London Passenger Transport Board. Therefore, unless any earlier Act compelled him to adopt another construction, the council were right in their contentions. On consideration of ss. 73 and 80 (9), (10) and (11) of the Act of 1933, he was of opinion that the plaintiff could not claim the benefit of the Act of 1944 by reliance on the concluding words of s. 80 (9).

Judgment for the defendants.

APPEARANCES: *M. R. Nicholas* (*Rexworthy, Bonser & Wadkin*); *H. E. Francis* (*J. H. Pawlyn*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

CATERING WAGES: WAITERS AND TIPS

Wrottesley *v.* Regent Street Florida Restaurant, Ltd.

Lord Goddard, C.J., Humphreys, Hilbery, Pritchard and Devlin, JJ.

13th February, 1951

Case stated by the Metropolitan Magistrate sitting at Marylebone.

The defendant company carried on an unlicensed restaurant. Four informations were preferred against them alleging that, being employers of workers to whom the Wages Regulation (Unlicensed Place of Refreshment) Order, 1949, applied, they at No. 269, Regent Street, W., unlawfully failed to pay remuneration not less than the statutory minimum remuneration to four of their workers, whose names were specified. The four workers in question, to whom the Order of 1949 applied, were waiters employed at the restaurant. It was agreed verbally between the waiters and the company that all sums which the waiters received as tips should be paid over to the company, who would each week pay the waiters as remuneration 30s. (in one case £2), and a certain proportion of the total amount of all the tips. The waiters placed the tips received in a locked box provided by the company. In the pay weeks to which the informations related each of the four waiters received from the company a wage of 30s. (in the one case £2) and a proportion of the total amount of tips in the box, the proportion to each waiter amounting to some £4 10s. (more in the one case). Regard was had to the tips as forming part of the waiters' emoluments for income tax purposes. The waiters were provided with meals while on duty. It was contended for the prosecution that each of the four men had been paid in the relevant week less than the minimum wage as prescribed by the Order of 1949 (the alleged deficiency being the difference between the prescribed sum and the 30s. paid as wages by the company). The magistrate held that, as the four men had received in all each week more than the prescribed minimum wage, there was no case for the defendant company to answer. The prosecutor, an officer appointed by the Ministry of Labour, appealed.

(*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that the magistrate had clearly been influenced by the fact that, both for the purpose of calculating the earnings of a waiter for the purpose of the Workmen's Compensation Acts, and for that of computing his profits or gains for assessment of income tax, tips had to be taken into account; but in their opinion that was really an irrelevant consideration. The amount of a man's earnings in an employment and the amount of remuneration which his employer paid to him were not necessarily the same thing. What the court had to decide was whether, when a waiter received a payment from the pool in the manner found in the case, that sum could be regarded as remuneration paid to him by, or as remuneration obtained by him in cash from, his employer. In their opinion, when a customer gave a tip to a waiter, the money became the property of the latter. The customer had no intention of giving anything to the employer. It had not been contended that, in a case where no pool existed, a tip given by a customer could be regarded as remuneration paid by or obtained from the employer. But where the pool system obtained the money given by the customer was paid into a pool by the waiter so that it then became the joint property of all those entitled to share in the pool. It seemed to the court that there was no ground for saying that those tips ever became the property of the defendant employers. Even if the box were kept in the actual custody of the employer he would have no title to the money. When the pool money was shared out, the waiters were dividing up their own money. Accordingly, the court held that the sums received from the pool by the waiters could not be taken into account in computing the amounts which the defendant company paid to them. Whether, in view of that judgment, the company had any possible answer to the charge against them was a matter for the magistrate to determine. The case must go back to him with their opinion that there was a case to answer.

Appeal allowed.

APPEARANCES: *Sir Hartley Shawcross*, K.C. (A.-G.), and *Rodger Winn* (*Solicitor, Ministry of Labour and National Service*); *Cyril Salmon*, K.C., and *H. Lester* (*J. Mayorcas*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

POISONING DUE TO PORK: CLAIM AGAINST BUTCHER

Heil *v.* Hedges

McNair, J. 22nd February, 1951

Action.

In December, 1946, the plaintiff bought two pork chops from the defendant, a butcher. As they were articles which it was the defendant's business to supply, the sale gave rise to the condition specified in s. 14 (1) (2) of the Sale of Goods Act, 1893, that they were fit for human consumption and of merchantable quality. The plaintiff alleged that, in breach of that condition, the chops were infected with parasite worms with the result that she contracted a disease known as trichina spiralis and was seriously ill. No claim was made based on negligence, and no suggestion was made that the defendant butcher had been negligent. The defendant alleged (1) that the pork was purchased by the plaintiff's husband, so that any contractual relations would be with him and not with the plaintiff, and (2) that the pork was fit for human consumption and was of merchantable quality, and that if it was the cause of the plaintiff's illness that was due to the fact that it was insufficiently cooked.

McNair, J., said that he found as a fact that the plaintiff ate the chops when they were underdone. It was common ground that her disease could only have been caused by pork. The question therefore was whether the defendant was guilty of a breach of the condition requiring that it should be reasonably fit for the purpose for which it was sold in accordance with s. 14 (1) (2) of the Act of 1893. It was common knowledge that pork should be cooked longer than other meat, and, in fact, until it was white. In the circumstances the implied condition of fitness would be satisfied if the pork, when supplied, was in such a condition that, if cooked in accordance with accepted standards, it would be innocuous. No useful English authorities had been cited, but counsel had referred to Canadian and American cases which supported that view. In his judgment the plaintiff's allegation as to the breach of the implied conditions of fitness and merchantable quality failed. It was therefore unnecessary to consider the contention that the contract was between the butcher and the plaintiff's husband. But he (his lordship) inclined to the view that the plaintiff had bought it as her husband's agent, as he had paid for it. There would be judgment for the defendant. He would have assessed the special damage at £209 6s. 10d. and general damages at £750.

Judgment for the defendant.

Appearances: *Scott Henderson*, K.C., and *C. E. Rochford* (*Stoneham & Sons*); *Arthian Davies*, K.C., and *M. Underhill* (*William Charles Crocker*).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

MARRIAGE SETTLEMENT: VARIATION

Garforth-Bles *v.* Garforth-Bles

Pearce, J. 21st December, 1950

Applications for variation of marriage settlement.

By a marriage settlement entered into by the applicant and her husband on 14th April, 1939, the day before the marriage, both parties brought in certain funds, the husband's share being twice that of the wife. There was one child of the marriage, born in 1940. Both parties now applied for an order extinguishing the rights, powers and interests of the wife in the husband's fund, and of the husband in the wife's fund, as from the date of the decree absolute, dated 14th January, 1949, which was granted to the wife. The husband further applied for an order that he should be at liberty to revoke the trusts of the settlement relating to one moiety of his fund, and to appoint that moiety or a part of it to any future wife and/or to the children of any future marriage. By that settlement the funds were to be held on trust " for all or such one or more of the children or remoter issue " after the death of the surviving spouse as appointed by deed or will or codicil. In March, 1949, a consent order was made in respect of the maintenance of the child under which the husband was to pay for it £220 a year, free of tax, until it reached the age of twenty-two years.

Pearce, J., said that it was clear that the court had power, under s. 192 of the Judicature Act, 1925, to grant the husband's application if it were just. He had brought funds into the settlement which were substantially all he possessed. If he remarried he had very little left for a future wife, and if his request were refused and none of the settlement funds could therefore go to a future wife or child, he might well have a feeling of injustice which would impair the friendly feeling at present existing between the father, who had shown that he was a generous father by the provision which he was making in the terms of the consent order, and the child. It might also appear unjust in the eyes of the family and of the child if the husband's request were refused, and such a feeling would be against the child's interests. Although there might be cases where financial stringency would justify such a request being refused, in this case it was reasonable to grant it, and the husband would be allowed to take out of the settlement two-fifths of the husband's fund.

Appearances: *A. Morton* (*Braby & Waller*); *S. E. Karminski*, K.C., and *R. J. A. Temple* (*Pickering, Kenyon & Co.*); *H. V. Brandon* (*Neish, Howell & Haldane*) (settlement trustees and child).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Town and Country Planning (Amendment) Bill [H.C.] [20th February.

Read Second Time :—

Forestry Bill [H.L.] [20th February.

B. Questions

Attendance and Detention Centres

The Lord Chancellor stated that three attendance centres had now been opened under the Criminal Justice Act, 1948, and it was hoped to open four more this year. No detention centres had yet been opened. Owing to the restrictions on capital investment there could be no prospect of providing new building for this purpose in the near future. The Prison Commissioners had, however, been searching for existing premises which might be adapted for use as detention centres and hoped to be able to open two new experimental centres in such premises this year. [20th February.

Corrective and Preventive Detention

The Lord Chancellor said that on 30th January, 1951, 2,160 men and 89 women were detained in H.M. Prisons in England and Wales under sentences of preventive detention. [20th February.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Reserve and Auxiliary Forces (Training) Bill [H.C.] [20th February.

To make temporary provision for the calling up of certain members of His Majesty's military and air forces for the purposes of training, and in connection therewith to provide for the punishment of incitement to dereliction of duty; to extend the provisions of Pt. II of the National Service Act, 1948; to make provision as to the liabilities of persons released from service for the purpose of again joining any of the armed forces of the Crown; and for purposes connected with the matters aforesaid.

Read Second Time :—

Export Guarantees Bill [H.C.] [19th February.

Long Leases (Temporary Provisions) (Scotland) Bill [H.C.] [19th February.

Overseas Resources Development Bill [H.C.] [20th February.

Supplies and Services (Defence Purposes) Bill [H.C.] [21st February.

To extend, for defence purposes and purposes relating to world peace and security, the Supplies and Services (Transitional Powers) Act, 1945, and Defence Regulations and other instruments having effect by virtue of that Act; and to make provision for the stopping up or diversion of highways for such purposes and for matters incidental thereto.

Transport (Amendment) Bill [H.L.] [23rd February.
Worcester Corporation Bill [H.C.] [20th February.
Workmen's Compensation (Supplementation) Bill [H.C.] [21st February.

In Committee :—

Leasehold Property (Temporary Provisions) Bill [H.C.] [22nd February.
Salmon and Freshwater Fisheries (Protection) (Scotland) Bill [H.C.] [22nd February.

B. DEBATES

Mr. BLACK moved the presentation of an humble Address to His Majesty praying for the annulment of the **Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950.** Mr. Black said he would confine his criticisms to r. 3 which dealt with the method of election of the chairmen and one or more deputy-chairmen of benches of justices. Section 13 of the Justices of the Peace Act, 1949, established that such elections should be made by secret ballot, and went on to give permission for rules to be made as to the procedure for the election of chairmen and deputy-chairmen. As the section was only permissive he wished to ask first, were any rules necessary in the public interest, and secondly, if rules were to be laid down, were these particular rules clear and desirable in the form in which they were phrased ?

It was common ground that in the past these elections had not always been carried out in the best possible manner, but that was due to the absence of a secret ballot, and the Act itself had thus gone a very long way to deal with that position. There was, consequently, a strong feeling among magistrates up and down the country that the rules were unnecessary and constituted an unwarrantable interference with the right of the justices to conduct this type of business in the way that seemed most expedient to them. He further understood that a good many clerks to justices' courts had already found it necessary to seek advice on the proper application and interpretation of the rules. For example, did "majority" in r. 3 (2) mean a "clear majority"? Again, voting was to be on lists containing the names of all the justices in the petty sessional area. Obviously many of the justices whose names were on the lists would not be prepared to accept office even if they were elected on the ballot. Could such justices ask for their names to be removed from the lists *before* the ballot ? If not, there might be endless abortive elections.

Mr. JOHN HAY, seconding the motion, said that r. 2 was ambiguous. It required "each" court of quarter sessions to prepare a list of the number of justices who were to sit to hear cases. Did this rule apply to courts where justices did not normally sit in quarter sessions, i.e., where the presiding judge was a Recorder ? Rule 2 also gave the Lord Chancellor very wide powers to approve a scheme for the carrying out of the objects of the rules. What exactly was envisaged by these powers ? The benches knew their own local circumstances best. If they thought that some particular scheme was best for these circumstances Parliament should be chary of giving a Minister power to override their decision.

Sir HARTLEY SHAWCROSS said the rules had been approved by the Magistrates' Association and other bodies, and by now most of the chairmen had been elected in accordance with the rules now under criticism and were actually carrying out their duties. The Royal Commission on Justices of the Peace had recommended secret ballot without nominations. There was no doubt that in the past there had been too much of the attitude : "Old So-and-So has always been the chairman and it would be a sad blow to him if we were to turn him out now," even though the justice concerned had, in the passage of years, shed many of the qualities which had originally qualified him for office. The thing had been freely canvassed beforehand ; the moment the meeting opened someone jumped up and said : "I nominate Mr. So-and-So," and no one dared to nominate anyone else. With regard to "majority," it meant simply what it said. He did not think the proceedings would in fact be unduly lengthened by the necessity of obtaining a clear majority.

Sir Hartley Shawcross said he would certainly think that a justice could withdraw his name if he wished. Furthermore, r. 2 (1) did not apply to borough quarter sessions because the justices, although they might attend, took no part as members of the court. With regard to r. 2 (2) it was not intended that the Lord Chancellor should lay down any model scheme which all quarter sessions would be compelled to adopt—one quite understood that local circumstances in different counties might vary and the fullest consideration would be given to local differences.

Mr. HARMER NICHOLLS said he did not think it a fair test for the Magistrates' Association to have approved the regulations without their being put before individual magistrates at annual meetings. He thought the secret ballot ridiculous—it was inconsistent with the dignity of magistrates that they should not be able to decide their own procedure for electing their chairman. What was the penalty, he would like to know, if the justices ignored these rules ? Mr. JOHN ARBUTHNOT wanted to know the authority for the Lord Chancellor's "recommendation" that not more than seven magistrates should normally sit in one court, and usually not more than five. Did this recommendation apply to licensing justices ?

The ATTORNEY-GENERAL said it did not. There the justices were engaged in an administrative and not a judicial function. The Lord Chancellor had power under the Act to fix the upper limit of magistrates who were to sit, but he thought it better to do it by way of a recommendation as there might be circumstances where the full number of magistrates should sit, e.g., to gain experience. [20th February.

When the Committee Stage of the **Leasehold Property (Temporary Provisions) Bill** was resumed Mr. J. ENOCH POWELL said he was not satisfied with the reasons given for excluding from the operation of the Bill lands held by the Crown in the right of the Duchies of Cornwall and Lancaster. He could not see what constitutional difference there was between them and lands held in right of the Crown. Sir FRANK SOSKICE said the differences were intangible, but what weighed with the Government was that the Sovereign was more personally concerned with the administration of the Duchy estates. In fact, however, the persons administering those estates would act in the same way as if the statute bound them. Mr. Powell withdrew his amendment.

Sir AUSTIN HUDSON asked what the position of sub-tenants of Crown property would be in these circumstances. The SOLICITOR-GENERAL said that *Clarke* v. *Downes* had held that the Rent Restrictions Acts did not bind the Crown, and therefore technically the Crown was not bound as against the sub-tenants under the terms of the Rent Restrictions Acts. This difference could not be dealt with within the scope of the present Bill. Apart from this, cl. 5 changed the *Knightsbridge Estates* case and brought within its scope tenants who, because of that decision, would otherwise have been outside the provisions of the Rent Restrictions Acts.

Next an amendment was made to cl. 15 (Provisions where reversion comes to an end) to deal with the following situation : A lets to B under a lease expiring in September, 1951. B lets to a shopkeeper C and, therefore, brings Pt. II of the Bill into operation under the terms of a lease which expires in June, 1951. The effect of Pt. II is that the shopkeeper C gets an extension for a year, and, therefore, his term expires after B's term. Without the amendment the result would be that B would not be a reversioner as his term would have expired before C's extended term came to an end. Therefore B would not enjoy the rights which a reversioner has, e.g., of levying distress for rent. The amendment provided that B should nevertheless be considered as a reversioner and should have the rights of a reversioner.

Two new clauses were inserted into the Bill. The first new clause was stated by the SOLICITOR-GENERAL to have the effect of giving a landlord power to give notice terminating the tenancy where there was an assignment of the whole or part of the living accommodation, or a sub-letting of the whole of the living accommodation. It had been objected in earlier debates that a tenant who was granted an extended tenancy under Pt. I of the Bill ought not to be able to turn this to his advantage by assigning or sub-letting. Secondly, a new clause was inserted to the effect that during the two years' standstill period, although landlords would not have the right of forfeiture for breach of covenant to maintain, nevertheless if it could be said that work was necessary for arresting or preventing serious depreciations in the condition of the property or of adjoining property, the landlord should be entitled to go in to do the repairs and to recover the cost of doing them, so far as it was reasonably necessary to do them, from the tenant. His right to recover the cost would be suspended, however, until the termination of the suspended tenancy. [22nd February.

C. Questions

Statute Law Committee

In a comprehensive statement relating to the work of the Statute Law Committee, Mr. Chuter Ede, after reviewing the work already completed, said that work was still proceeding on three exceptionally large undertakings—the consolidation of the law relating to Income Tax, to Customs and Excise, and to the work of Magistrates' Courts. The last two Bills would not be pure consolidation Bills, as it was expected that some changes would be made which were too structural in character and extensive in range to be dealt with under the new consolidation procedure. Bills were therefore being prepared which, though they did not purport to reproduce exactly the existing law, did represent the substance of it as it worked in practice. Each Bill would be submitted to a departmental committee of experts in the subject concerned.

With regard to the problem of reducing the bulk of the published volumes of the statutes and statutory instruments, and of providing means whereby they could be readily noted up, the committee had thought it important that all the volumes of the Statutes Revised should be published simultaneously so as to secure a clean start with a fresh Statute Book which could then be kept noted up. Congratulations were due to the editor, Sir Robert Drayton, for his successful accomplishment of this task earlier this year. This new edition could be kept noted up without skilled assistance by means of the simple directions for noting-up published annually under the title "Annotations to Acts."

The new (Third) Edition of Statutory Rules and Orders and Instruments Revised (the first since 1904) was in process of publication. Eight volumes had been printed and another eleven were in the hands of the printers. It was expected that this work would be completed in about twenty-eight volumes by the end of 1951. An inexpensive cumulative publication was being prepared under the instructions of the committee to enable the Third Edition to be kept up to date.

The Statutory Publications Office had been so reorganised as to prevent accumulation of arrears of publication in future. Statute law revision and the preparation of future revised editions, both of statutes and of statutory rules and instruments, was now being carried out on a day-to-day basis, so that when the time was ripe for new editions they could be produced at short notice. [19th February.

Prevention of Corruption Acts

The Attorney-General stated that the question of an amendment of the Prevention of Corruption Acts, 1889–1916, to cover all nationalised undertakings, the British Broadcasting Corporation and Government departments, and also the passing of money in connection with the granting of licences as well as contracts, was under consideration but he could not at present undertake to introduce legislation in regard to it.
[19th February.

Courts Martial (Composition)

Mr. Shinwell said that the conclusions of the Government on the recommendations of the Lewis Committee did not involve amendments of the law relating to the composition of Army and Air Force courts martial. Any necessary legislation affecting the composition of the Naval courts martial arising out of recommendations of the First Report of the Pilcher Committee would be undertaken when amendment of the Naval Discipline Act for other purposes was required. [19th February.

Registrar-General's Department

The Prime Minister said that the recent redistribution of functions had occasioned no change in the relationship between the Minister of Health and the Registrar-General, who was a statutory officer discharging responsibilities entrusted to him directly by various Acts of Parliament. He did not think there was any reason why the registrar should be associated with the Minister of National Insurance for purposes of parliamentary responsibility.
[20th February.

Agricultural Workers' Hostels (Development Charge)

Mr. Lindgren stated that in future when a farmer erected a hostel for his own agricultural workers no development charge would be payable so long as the hostel continued to be used for the purpose stated. [20th February.

Cruelty Cases (Penalties)

The Home Secretary said he recognised the state of public opinion in this matter, and his observation had led him to the conclusion that it had had some effect on the magistrates' courts. If further action were, in his opinion, called for he would take it. He reminded members that the foundation of liberty in this country was that magistrates were completely free from supervision and dictation by the Executive, and while he remained Home Secretary he would bear that in mind. He would far rather see cruelty to children prevented than punished, and he had in conjunction with the Salvation Army started a home in Plymouth at which feckless mothers would get help and advice on the proper way to live in family life.
[22nd February.

Deportation Orders

Mr. Chuter Ede stated that during the years 1946–50 the courts had recommended deportation in 1,036 cases, and in 617 of those cases deportation orders had been made. In addition 1,469 deportation orders had been made in cases in which there had been no recommendation for deportation from a court. [22nd February.

STATUTORY INSTRUMENTS

Advertisement Lighting (Isolated Areas) Licence, 1951. (S.I. 1951 No. 262.)

Agricultural Marketing (Consumers' Committee) (Amendment) Regulations, 1951. (S.I. 1951 No. 245.)

Baking Wages Council (Scotland) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 228.)

Bread Order, 1951. (S.I. 1951 No. 258.)

Draft **Building** (Safety, Health and Welfare) (Amendment) Regulations, 1951.

County of East Sussex (Electoral Divisions) Order, 1951. (S.I. 1951 No. 237.)

Diversion of Highways (Buckinghamshire) (No. 1) Order, 1951. (S.I. 1951 No. 240.)

Feeding Stuffs (Prices) (Amendment) Order, 1951. (S.I. 1951 No. 236.)

Furniture (Maximum Prices) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 205.)

General Apparel (Manufacturers' Maximum Prices and Charges) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 248.)

Iron and Steel Prices Order, 1951. (S.I. 1951 No. 252.)

Jute Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 244.)

Knitted Goods (Manufacture and Supply) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 249.)

Leeds Water Order, 1951. (S.I. 1951 No. 232.)

Legal Aid and Advice (Staff Pensions) Regulations, 1951. (S.I. 1951 No. 251.)

These regulations lay upon The Law Society the duty of setting up a pensions scheme for persons employed by them whole time for the purposes of Pt. I of the Legal Aid and Advice Act, 1949. The cost of the scheme is to be met by contributions from the beneficiaries and from The Law Society.

Live Poultry (Scotland) (Restrictions) Order, 1951. (S.I. 1951 No. 233.)

Poole Water Order, 1951. (S.I. 1951 No. 239.)

Rubber Manufacturing Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 254.)

Saint Albans Water Order, 1951. (S.I. 1951 No. 261.)

South Holland Embankment Drainage District (Alteration of Boundaries) Order, 1950. (S.I. 1951 No. 246.)

South Holland Embankment Drainage District (Alteration of Boundaries) (Appointed Day) Order, 1951. (S.I. 1951 No. 247.)

Stopping up of Highways (Glamorganshire) (No. 2) Order, 1951. (S.I. 1951 No. 224.)

Stopping up of Highways (Hertfordshire) (No. 2) Order, 1951. (S.I. 1951 No. 225.)

Stopping up of Highways (Middlesex) (No. 1) Order, 1951. (S.I. 1951 No. 223.)

Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) (Amendment No. 5) Order, 1951. (S.I. 1951 No. 212.)

Utility Apparel (Women's and Maids' Underwear and Nightwear) (Manufacture and Supply) (Amendment No. 5) Order, 1951. (S.I. 1951 No. 250.)

Witney Urban Water Order, 1951. (S.I. 1951 No. 231.)

NON-PARLIAMENTARY PUBLICATIONS

Ministry of Town and Country Planning. Bulletin of Selected Appeal Decisions No. IX.

Among the decisions in this bulletin are the following, viz.: That the parking of a caravan in the drive or garden of a private house during such time as it is not being used for holiday purposes is not development within the meaning of the 1947 Act and does not require planning permission; a decision that the division of shop premises into two or more shops did not in itself involve any change in the material user of the building or any part thereof, but if one of the parts so created was to be put to a different use, that remained to be considered as a material change in the use of that part.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope

Insurance Premiums paid out of Housekeeping Money

Q. A died in 1949 intestate. His wife, B, who survived him, had effected a number of policies of assurance on his life, but in her favour. B had no separate estate and did not earn any money at any time since the policies were effected, but she paid all the premiums out of money given to her by A for housekeeping and similar purposes, no part of the money being earmarked by A for payment of the premiums. Since the death the insurance company have paid to B the moneys due on the policies. Do these moneys form part of A's estate (i) for purposes of estate duty and (ii) for purposes of administration of the estate? The latter is particularly important as there is a minority interest in the residuary estate.

A. In our opinion the question of whether the policy moneys form part of A's estate for purposes either of estate duty or of administration is one of fact. We are aware that housekeeping money provided by the husband remains his property and any balance after payment of the household expenses is held by the wife upon trust for the husband, but we think that the circumstance that the husband allowed surplus moneys to be laid out in the payment of premiums taken out by the wife in her favour is some evidence that he regarded the premiums as an advancement or gift to the wife. No evidence is necessary to support the presumption of advancement in the case of property purchased in the wife's name out of moneys provided by the husband (*Gascoigne* v. *Gascoigne* [1918] 1 K.B. 223), and we consider that this presumption of advancement would apply to the premiums and, therefore, to the policy moneys in the present case. In so far as the housekeeping money was utilised in the payment of premiums, it must, we think, be regarded as surplus to household requirements, and such surplus, if not recalled by the husband, would not appear to be of the same nature as money actually laid out for household purposes, provided the husband was aware of the payment of the premiums out of such surplus. Even if the husband had been able to recall the surplus, it would appear to be an extension of existing principles to confer that right on his personal representatives. Accordingly, our opinion is that the policy moneys do not belong to A's estate for either purpose, but that the premiums paid during the last five years of A's life are a gift *inter vivos* upon which B must pay duty.

Assignment of Leasehold Property—Execution

Q. Is it necessary for an assignment of leasehold property to be signed by the purchaser (*a*) where there is no express covenant by the purchaser and reliance is placed on the covenants implied by the Law of Property Act, 1925, s. 77 (1) (*c*); (*b*) where the assignment contains the following: "It is hereby agreed and declared that the covenants implied under s. 77 (1) (*c*) of the Law of Property Act, 1925, shall be incorporated in this assignment"?

A. It is not, in our opinion, strictly necessary for an assignment of leasehold property to be executed by the purchaser, whether or not a declaration is contained therein that the covenants implied under s. 77 (1) (*c*) of the Law of Property Act, 1925, are incorporated. That section states that such covenants shall be implied in any conveyance for valuable consideration. Accordingly, such covenants will be deemed to be incorporated in the instrument and be binding on the purchaser provided it is a "conveyance for valuable consideration." The current practice of obtaining the execution of an assignment of leaseholds by the purchaser dates from before 1926, when an express covenant of indemnity by the purchaser was necessary. Even then, execution by him was not absolutely essential, since a party who takes the benefit of a deed is bound by its terms (*Webb* v. *Spicer* (1849), 13 Q.B. 886; *Witham* v. *Vane* (1881), 44 L.T. 718). In the case of transfers of registered leasehold land where equivalent covenants are implied, execution by the assignee is not usually called for except where a variation of such covenants is required.

Marriage Settlement—Funds for Erection of House

Q. By a marriage settlement made in 1915 the trustees thereof are empowered to invest its funds in "any stocks funds or securities authorised by law for trust funds or in the purchase of freehold or copyhold houses and land in England or in the purchase of inscribed stock of any British colony or in mortgage of any real estate or of any leasehold houses or land in England or Wales held for a term having at least sixty years to run at the time of the investment or on life interest in real or personal property together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden." At the commencement of the trust all the assets were in stocks and shares, but since then real estate has been purchased in England including "Blackacre" which is at present occupied by the tenant for life. The tenant for life has inquired from the trustees if they will provide the necessary cash out of the trust funds to erect another house on part of the grounds of "Blackacre." The tenant for life proposes to let the house after erection. In view of the fact that the marriage settlement investment clause (of which a full copy is given above) refers to "the purchase of . . . houses or land," the trustees are uncertain whether this will cover the expenditure of capital on the erection of a house.

A. Where money is authorised by a settlement to be laid out in the purchase of land, it has been held in a long series of cases under the old law that such money could be used for the erection of new buildings: *Re Barrington's Settlement* (1860), 1 J. & H. 142; *Re Newman's Settled Estates* (1874), L.R. 9 Ch. 681; *Drake* v. *Trefusis* (1875), L.R. 10 Ch. 364; *Re Speer's Trusts* (1876), 3 Ch. D. 262; and *Re Lytton's Settled Estates* [1884] W.N. 193. This principle, although followed, was doubted by Mellish, L.J., in *Re Newman*, *supra*, and after the Settled Land Act, 1882, it was considered in *Re Lord Gerard's Settled Estates* [1893] 3 Ch. 252 that the principle should not be extended in view of the wide powers covering the application of capital money contained in that Act. The erection of the house desired by the tenant for life would appear covered as an "improvement" within the Third Schedule to the Settled Land Act, 1925 (either Pt. I, para. (xxii), or Pt. II, para. (iii)), but if not authorised as an improvement we consider that it would come within the cases mentioned above and be regarded as an investment in land. This latter point is of supreme importance if the settlement is upon trust for sale and therefore one to which the Settled Land Act, 1925, does not apply.

Master F. S. A. Baker has succeeded Sir Percy Simner, who has retired, in the office of Senior Master in the King's Bench Division of the Supreme Court of Judicature.

The Master of the Rolls has appointed Mr. W. R. Lawrence to be a Master in the King's Bench Division of the Supreme Court of Judicature to fill a vacancy caused by Sir Percy Simner's retirement.

Mr. T. M. Baker, clerk to Felling Urban Council, has been appointed clerk to Eston Urban Council. He will be succeeded at Felling by Mr. John Donkin, senior assistant solicitor to Tynemouth Corporation.

Mr. J. K. Boynton, senior assistant solicitor to Derbyshire County Council, has been appointed deputy Clerk of the Council and deputy Clerk of the Peace for Berkshire.

NOTES AND NEWS

Honours and Appointments

Mr. W. C. F. GODSELL has been appointed assistant solicitor to Chelmsford Corporation.

Mr. R. C. HUNTRISS, clerk to the Brackley justices, has been appointed in addition clerk to the Banbury and Bloxham justices.

Mr. J. H. MORRIS, legal assistant to Herefordshire County Council, has been appointed second assistant solicitor with Northants County Council in succession to Mr. W. T. S. DIGBY-SEYMOUR, who has been appointed assistant solicitor to Derbyshire County Council.

Personal Notes

Mr. Albert Slater, solicitor, of Hyde, was presented with a silver cigar case at a luncheon given in his honour on 9th February, 1951, the 65th anniversary of his admission, by the Ashton and District Law Association.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

DAVID HEPPELL HUGHES, of Kampala, in the Uganda Protectorate, Solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires to obtain call to the Bar, an order was, on the 16th day of February, 1951, made by the Committee that the application of the said David Heppell Hughes be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

On the 16th February, 1951, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon FRANK POPE TREASURE, of 33 Rodney Road, Cheltenham, in the County of Gloucester, a penalty of £100, to be forfeit to His Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 16th February, 1951, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon THOMAS GLENDINNING, of 41 John Dalton Street, Manchester, and 411 Moorside Road, Flixton, Lancashire, a penalty of £50 to be forfeit to His Majesty, and that he be suspended from practice as a solicitor for a period of three months from the date of the order and that he do pay to the applicant his costs of and incidental to the application and inquiry.

Wills and Bequests

Mr. William Adams, Town Clerk of Saffron Walden from 1895 to 1935, left £48,358.

OBITUARY

MR. G. A. V. CONNOLLY

Mr. George Augustus Victor Connolly, solicitor to British Railways and the Southern Railway for over thirty years, has died at the age of 63. He was admitted in 1909.

MR. S. J. ENNION

Mr. Sidney John Ennion, formerly senior partner of Messrs. Ennions (formerly d'Albani and Ennions), of Newmarket and Soham, died on 16th January, aged 82. He was admitted in 1895.

MR. B. R. M. FORBES

Mr. Barré Robert Machray Forbes, solicitor, of Bristol, died on 21st February, the eve of his eightieth birthday. He was admitted in 1897 and was clerk to the Long Ashton magistrates for many years.

MAJOR F. R. HEDGES

Major Francis Reade Hedges, solicitor, of Wallingford, died recently, aged 75. Admitted in 1902, he succeeded his father as Town Clerk of Wallingford in 1909. He was clerk to the Moreton and Wallingford magistrates.

MR. A. A. G. JONES

Mr. Alan Anthony Grantham Jones, solicitor, of Gloucester, formerly Clerk of the Peace for the City of Gloucester, died on 16th February, aged 67. He was admitted in 1906.

MR. F. W. LOE

Mr. Francis Walter Loe, who was for over fifty years employed by the associated firms of Cooper, Walker & Hall and Hall and Corbin, of Queen Street Place, London, E.C.4, died on 21st February.

SIR CHARLES McGRATH

Sir (Joseph) Charles McGrath, Clerk of the Peace of the West Riding of Yorkshire and Clerk to the West Riding County Council from 1929 until his retirement in 1943, died on 15th February, aged 75. He was admitted in 1901 and appointed assistant solicitor to the West Riding County Council in 1902. He was knighted in 1933 and was Deputy Commissioner for Civil Defence, North-Eastern Region, from 1939–41.

MR. W. I. MITCHELL

Mr. Walter Irwin Mitchell, solicitor, of Sheffield, died on 20th February. He was admitted in 1912.

MR. R. A. W. MOYLAN-JONES

Mr. Reginald Arthur Withers Moylan-Jones, solicitor, of John Street, Bedford Row, London, W.C.1, died on 5th February, aged 63. He was admitted in 1911.

MR. A. C. PONSFORD

Mr. Arthur Cuthbertson Ponsford, solicitor, of Cannon Street, London, E.C.4, died on 14th February. He was admitted in 1908.

MR. A. SLACK

Mr. Alfred Slack, solicitor, of Chesterfield and Clay Cross, died on 11th February, aged 88. Admitted in 1886, he was clerk to the Clay Cross Council for nearly forty years.

MR. C. G. SYRETT

Mr. Clarence Goulee Syrett, solicitor, of John Street, Bedford Row, London, W.C.1, died on 13th February. He was admitted in 1897.

SOCIETIES

At the annual meeting of the NEWCASTLE-UPON-TYNE INCORPORATED LAW SOCIETY, held at the society's library on 24th January, 1951, the 124th anniversary of the institution of the society, the President, Mr. T. M. Harbottle, was in the chair. The following were elected: President, Mr. Ernest Nixon; Vice-President, Mr. H. L. Swinburne; Hon. Treasurer, Mr. S. G. March; Hon. Secretary, Mr. T. M. Harbottle; Hon. Librarian, Mr. Philip Layne.

The BRADFORD LAW STUDENTS' SOCIETY'S annual ball on 23rd February was attended by many Bradford solicitors. This year, the society's centenary, the invitations were couched in the form of a petition; last year they were summonses, and the year before guests were admitted by special licence.

The UNION SOCIETY OF LONDON, which meets in the Common Room, Gray's Inn, at 8 p.m., announces the following subjects for debate in March, 1951: Wednesday, 7th March, "That gambling is not immoral"; Wednesday, 14th March, "That civilisation owes more to money than to brains"; Tuesday, 20th March, ladies' night debate: tickets (price 3s. 6d. each) are obtainable from any officer or member of the committee. The next meeting will be on Wednesday, 4th April.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland £3, Overseas £3 10s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).